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MERCHANT & GOULD PC			ARK, DARREN W	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/581,533	Applicant(s) STURGEON ET AL.	
	Examiner Darren W. Ark	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,7,9,10,12-14,16-19,23 and 25-29 is/are pending in the application.
- 4a) Of the above claim(s) 7,14,16,17,19,23 and 25-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,9,10,12,13 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 7, 14, 16, 17, 19, 23, and 25-29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group and Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 06/18/2010.

Claim Objections

2. Claims 12, 13 are objected to because of the following informalities:

Claims 12 and 13, the term --of-- should be inserted after “range” and before the size ranges being claimed.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4, 5, 9, 18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Japanese Pat. No. 2001-333683 to Moribe.

Moribe discloses a holder (1) and a trigger mechanism (2, 3 or 3 alone), the holder configured to hold an expanded resilient ring (4), the holder having an open end (top end of 1 in Fig. 1) and wherein a pest enters the extermination device through the open end (see Fig. 3), at least a portion of the pest upon entry into the device being positioned inside the ring (4) and adjacent the trigger mechanism (2, 3), wherein the device is configured to release the ring free of the device (4 is released from 3 and shown to be free in Fig. 4 from the rest of the device) such that the ring contracts around the pest when the trigger mechanism is actuated by the pest (see Fig. 4), thereby exterminating the pest (4 tightens around M; see paragraph 0012 of the translation).

In regard to claim 2, Moribe discloses the holder being tubular (although 1 is triangular shape in cross section, it is tubular since it has sidewalls that extend along a longitudinal axis and is hollow therein) and is open at the first end (top end of 1 in Fig. 1) and is closed at the second end (via 2).

In regard to claim 5, Moribe discloses a bait or attractant (food 6) placed such that the trigger (portion of 3 extends as claimed) is between the first end (top end of 1 in Fig. 1) and the bait or attractant (6; see Fig. 3 or 4).

In regard to claim 18, Moribe discloses the device configured to release the ring (4), such that it contracts around the neck of the pest (4 is capable of contracting around the neck of the pests since it is resilient).

5. Claims 1, 2, 4, 5, 9, 18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Japanese Pat. No. 2003-070408 to Murakami.

Murakami discloses a holder (1) and a trigger mechanism (3-6 or 5 alone), the holder configured to hold an expanded resilient ring (rubber band 7), the holder having an open end (right end of 1 in Fig. 1) and wherein a pest enters the extermination device through the open end (see Fig. 1), at least a portion of the pest upon entry into the device being positioned inside the ring (7) and adjacent the trigger mechanism (3-6), wherein the device is configured to release the ring free of the device (7 is released from 5 and made free from rest of device) such that the ring contracts around the pest when the trigger mechanism is actuated by the pest (7 fits around pest), thereby exterminating the pest (7 contracts around neck; see Abstract Problem to be Solved line 4 wherein it states "hanging a rubber ring having a bell to the neck...of a scouting black rat").

In regard to claim 2, Murakami discloses the holder being tubular (although 1 is square in cross section, it is tubular since it has sidewalls that extend along a

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longitudinal axis and is hollow therein) and is open at the first end (right end of 1 in Fig. 1) and is closed at the second end (via rear wall of 1 shown clearly in Fig. 4).

In regard to claim 5, Murakami discloses a bait or attractant (E) placed such that the trigger (5) is between the first end (right end of 1 in Fig. 1) and the bait or attractant (E; see Fig. 2).

6. Claims 1, 2, 4, 9, 18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kita et al. 3,974,762.

Kita et al. discloses a holder (11, 21, 25) and a trigger mechanism (30, 40), the holder configured to hold an expanded resilient ring (27), the holder having an open end (top of 15 or 16) and wherein a pest enters the extermination device through the open end (pest is capable of entering 15 or 16 similar to the manner in which produce bunch is inserted therein), at least a portion of the pest upon entry into the device being positioned inside the ring (27) and adjacent the trigger mechanism (30, 40), wherein the device is configured to release the ring free of the device (27 is pushed off of 25 via 26) such that the ring contracts around the pest when the trigger mechanism is actuated by the pest (any object inserted against 30 will cause the 27 to contract therearound), thereby exterminating the pest (27 tightens around produce therein).

In regard to claim 2, Kita et al. disclose the holder being tubular (rectangle shaped tubes 15, 16) open at a first end (top ends) and closed at a second end (via 31; closed end not being particularly claimed).

7. Claims 1, 9, 18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Seserman 3,078,631.

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Seserman discloses a holder (10, 12, 14, 28) and a trigger mechanism (52), the holder configured to hold an expanded resilient ring (26), the holder having an open end (right end of 10, 12, 14, 28 in Fig. 1) and wherein a pest enters the extermination device through the open end (pest is capable of entering 10, 12, 14, 28 from right side as claimed), at least a portion of the pest upon entry into the device being positioned inside the ring (26) and adjacent the trigger mechanism (see 25 adjacent 52), wherein the device is configured to release the ring free of the device (26 is pushed off of 18, 19 to be free of the device) such that the ring contracts around the pest when the trigger mechanism is actuated by the pest (actuation of 52 by any object or user will cause the 26 to contract therearound; trigger location relative to other parts of the trap are not being particularly claimed), thereby exterminating the pest (26 tightens around 25 therein).

8. Claims 1, 9, 18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wynn et al. 5,588,278.

Wynn et al. discloses a holder (P, F1-F4) and a trigger mechanism (D, L), the holder configured to hold an expanded resilient ring (B), the holder having an open end (top of A) and wherein a pest enters the extermination device through the open end (pest is capable of entering A similar to the manner in which Q is inserted into A), at least a portion of the pest upon entry into the device being positioned inside the ring (B) and adjacent the trigger mechanism (D, L), wherein the device is configured to release the ring free of the device (see Fig. 2B wherein thereafter the bouquet of broccoli Q is able to be removed from F1-F4) such that the ring contracts around the pest when the

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trigger mechanism is actuated by the pest (any object that blocks the path of light from L causes actuation of F1-F4 to place ring about the object within A), thereby exterminating the pest (tight ring about pest).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 10, 12, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Pat. No. 2001-333683 to Moribe.

In regard to claim 10, Moribe discloses a rubber band but does not disclose the resilient ring made from a composite material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the resilient ring from a composite material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because a person of ordinary skill in the art would readily construct the ring out of a composite material in order to achieve the desired resiliency and strength. *In re Leshin*, 125 USPQ 416.

In regard to claims 12 and 13, Moribe does not disclose a dimension of an opening of the holder being in the range of 25 to 40 mm or 60 to 100 mm. It would have been an obvious matter of design choice to make a dimension of the opening of the

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holder such that it is in the range of 25 to 40 mm or 60 to 100 mm since applicant has not disclosed that by doing so is critical to the design or produces any unexpected results and it appears that the opening of Moribe would perform equally as well with such a dimension, and because a person of ordinary skill in the art would readily size the trap in order to be able to accommodate the desired pest to be eliminated.

11. Claims 10, 12, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Pat. No. 2003-070408 to Murakami.

In regard to claim 10, Murakami discloses a rubber band but does not disclose the resilient ring made from a composite material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the resilient ring from a composite material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because a person of ordinary skill in the art would readily construct the ring out of a composite material in order to achieve the desired resiliency and strength. *In re Leshin*, 125 USPQ 416.

In regard to claims 12 and 13, Murakami does not disclose a dimension of an opening of the holder being in the range of 25 to 40 mm or 60 to 100 mm. It would have been an obvious matter of design choice to make a dimension of the opening of the holder such that it is in the range of 25 to 40 mm or 60 to 100 mm since applicant has not disclosed that by doing so is critical to the design or produces any unexpected results and it appears that the opening of Murakami would perform equally as well with

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such a dimension, and because a person of ordinary skill in the art would readily size the trap in order to be able to accommodate the desired pest to be eliminated.

12. Claims 10, 12, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kita et al. 3,974,762.

In regard to claim 10, Kita et al. disclose a rubber band but does not disclose the resilient ring made from a composite material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the resilient ring from a composite material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because a person of ordinary skill in the art would readily construct the ring out of a composite material in order to achieve the desired resiliency and strength. *In re Leshin*, 125 USPQ 416.

In regard to claims 12 and 13, Kita et al. does not disclose a dimension of an opening of the holder being in the range of 25 to 40 mm or 60 to 100 mm. It would have been an obvious matter of design choice to make a dimension of the opening of the holder such that it is in the range of 25 to 40 mm or 60 to 100 mm since applicant has not disclosed that by doing so is critical to the design or produces any unexpected results and it appears that the opening of Kita et al. would perform equally as well with such a dimension, and because a person of ordinary skill in the art would readily size the opening such that it is able to fully and properly receive the produce bunch to be banded together.

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13. Claims 10, 12, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seserman 3,078,631.

In regard to claim 10, Seserman discloses a rubber band but does not disclose the resilient ring made from a composite material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the resilient ring from a composite material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because a person of ordinary skill in the art would readily construct the ring out of a composite material in order to achieve the desired resiliency and strength. *In re Leshin*, 125 USPQ 416.

In regard to claims 12 and 13, Seserman does not disclose a dimension of an opening of the holder being in the range of 25 to 40 mm or 60 to 100 mm. It would have been an obvious matter of design choice to make a dimension of the opening of the holder such that it is in the range of 25 to 40 mm or 60 to 100 mm since applicant has not disclosed that by doing so is critical to the design or produces any unexpected results and it appears that the opening of Kita et al. would perform equally as well with such a dimension, and because a person of ordinary skill in the art would readily size the opening such that it is able to fully and properly receive the produce bunch to be banded together.

14. Claims 10, 12, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wynn et al. 5,588,278.

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In regard to claim 10, Wynn et al. disclose a rubber band but does not disclose the resilient ring made from a composite material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the resilient ring from a composite material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because a person of ordinary skill in the art would readily construct the ring out of a composite material in order to achieve the desired resiliency and strength. *In re Leshin*, 125 USPQ 416.

In regard to claims 12 and 13, Wynn et al. does not disclose a dimension of an opening of the holder being in the range of 25 to 40 mm or 60 to 100 mm. It would have been an obvious matter of design choice to make a dimension of the opening of the holder such that it is in the range of 25 to 40 mm or 60 to 100 mm since applicant has not disclosed that by doing so is critical to the design or produces any unexpected results and it appears that the opening of Kita et al. would perform equally as well with such a dimension, and because a person of ordinary skill in the art would readily size the opening such that it is able to fully and properly receive the broccoli bouquet to be banded together.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (571) 272-6885. The examiner can normally be reached on M-F, 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darren W. Ark/
Darren W. Ark
Primary Examiner
Art Unit 3643

DWA